

AMERICAN CETACEAN SOCIETY



May 31, 2001

Donna Wieting, Chief
Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring MD 20910-3226

Re: 66 FR 15375, Proposed Rule for the Taking of Marine Mammals Incidental to Navy Operations
of SURTASS LFA Sonar
AND
Final Overseas Environmental Impact Statement for SURTASS LFA Sonar

Dear Ms. Wieting:

Thank you for the opportunity to comment upon both the Proposed Rule and FOEIS as referenced above. The American Cetacean Society's concerns as presented in its comments to the Navy and to NMFS in October 1999 regarding the DOEIS/EIS have not been adequately addressed in the FOEIS and should be taken with this document as current and considered a part hereof.

First and foremost, we would like to bring to your attention the thoroughly inadequate response the Navy provided in its FOEIS to the 139 questions we raised regarding the DOEIS. Where our original 24-page comment letter asked for specific scientific data supporting the Navy's assertions and for the rationale behind dubious modeling scenarios, the FOEIS simply refers the questioner back to what was contained in the DOEIS. To refer the questioner back to the original document, which was inadequate to begin with, is at the least dismissive and at the worst arrogant, and we protest in the strongest possible terms the Navy's disregard of our concerns as apparently insignificant. It should also be pointed out to NMFS that in doing so, the Navy is in violation of its NEPA requirements by failing to answer the questions presented during a public comment period. The Navy may have "responded" to the questions with the publication of the FOEIS, but the Navy did not answer the questions asked by providing the data and documentation requested.

We would like to align ourselves with the technical comments submitted separately by Dr. John Potter and Dr. Mark McDonald regarding TTS, PTS and resonance and will not comment further upon those aspects of the FOEIS, except to say that in light of substantial new scientific data regarding the effects of resonance on marine mammals created by high-intensity, low- and mid-range frequency sound, and the Navy's lack of addressing this issue at all in the FOEIS, NMFS is required to withdraw its Proposed Rule pending further research and study. NMFS is fully aware of the 1994, 1996 and 2000 strandings and deaths of whales coincident with the operation of military sonars, at least one of which involved LFA sonar. In the interests of fulfilling its mandate under the MMPA, NMFS should not grant the Navy a Letter of Authorization based on this one serious and lethal deficiency alone.


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We also strongly object to NMFS issuing a Letter of Authorization to the Navy for a "small take permit" for the deployment of a system that self-admittedly will cover 80% of the world's oceans when fully deployed. Using the Navy's own figures, NMFS is accepting a 95% "take rate" for marine mammals within the 180 dB sound field (1 km from the transmitting source), and "only" a 50% take rate for marine mammals within a 165 dB RL zone of influence will be "biologically affected" -- which means all marine mammals within hundreds of cubic kilometers of ocean around the transmitting source will be "biologically affected." Not only are the three proposed monitoring and mitigation regimes completely inadequate to cover a zone this size, but the numbers of marine mammals living within an area this size, 50% of which will be "biologically affected," hardly constitutes a "small take."

Additionally, we question NMFS' legal authority for issuing such an Authorization for operation of LFA outside the jurisdiction of US territorial waters without the Navy getting similar authorization from every country that has an interest in or operates on the high seas. As we commented previously, this technology is global in scope and it should require global participation of all affected governments before being deployed. In the DOEIS and FOEIS, the "O" stands for "Overseas," yet we are unaware that any "overseas" government or scientific body was invited to participate, consult or cooperate in the development of this program. We would urge NMFS to immediately withhold its Letter of Authorization pending the convening of an international panel comprised of political, scientific and military experts from all countries with maritime interests regarding the efficacy and safety of such a technology being used in the marine environment.

We would also like to remind NMFS that it is incumbent upon the Navy to prove that LFAS is safe at the asserted levels by using the best available scientific data, which it has not done; it is not incumbent upon commenters to prove that it is not safe. Therefore, until such time as the Navy can provide the appropriate data to support the claims made in the FOEIS, we have no choice but to support Alternative 3-the "No Action" alternative, and respectfully request NMFS to withdraw its Proposed Rule and withhold any Letter of Authorization for the deployment of SURTASS LFA sonar.

Sincerely,

A handwritten signature in black ink, appearing to read "Katy Penland". The signature is fluid and cursive, with a long, sweeping underline.

Katy Penland
President
American Cetacean Society